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The role of UNESCO in promoting universal human rights

From 1948 to 2005

Roberto Andorno

Introduction

UNESCO was created in the aftermath of the Second World War to reaffirm the conviction of the international community that intercultural dialogue and respect for justice and human rights are essential to build a durable peace. The UNESCO Constitution, which was adopted in November 1945, states that the first objective of the organization is “to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms”.

Consistent with this goal, UNESCO formed in 1947 a committee of intellectuals from different countries and cultural backgrounds, who made recommendations for the development of a universal human rights instrument. In this way, the Organization contributed to the preparatory work of the *Universal Declaration of Human Rights* (henceforth UDHR) of 1948, which would become the pillar upon which the entire human rights system is built. Almost 60 years later, in 2005, UNESCO served as a platform for the international community to develop the *Universal Declaration of Bioethics and Human Rights* (henceforth UDBHR), which is the first global legal instrument that comprehensively addresses the linkage between human rights and bioethics.

This chapter aims to draw a parallel between these two significant efforts of UNESCO in the promotion of universal human rights, and to emphasize that the UDBHR is ultimately an extension of international human rights law to the specific field of biomedicine.

A short history of UNESCO

Towards the end of 1942, in the middle of the Second World War, representatives of the European countries that were fighting Nazi Germany and its allies had a first meeting in London for what came to be known as the Conference of Allied Ministers of Education (CAME). They were examining ways and means to reconstruct their systems of education once the war had come to an end. In one of the subsequent meetings of CAME, it was proposed to create an international organization for education. Upon this proposal, the recently founded United Nations convened a conference in London in November 1945 for “the establishment of a United Nations Educational and Cultural Organization”.¹

Representatives of forty-four countries took part at the London Conference, which was presided over by Miss Ellen Wilkinson, Minister of Education of Great Britain. The delegates decided to create an organization that would embody a genuine culture of peace and establish the “intellectual and moral solidarity” of humankind in order to prevent the outbreak of another world war.² The driving idea shared by delegates was that fostering education and intercultural dialogue was the best way to promote peaceful relationships between countries. This inspiring idea was thereafter enshrined at the beginning of UNESCO’s Constitution, which states that “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”.

It is noteworthy that the initially planned organization was only concerned with educational and cultural issues. However, a number of scientists were pressing for the inclusion of science in both the title of the organization and in its programme of activities. In the forefront of this effort to put the ‘S’ for science in the organization’s name and goals were the British biologist and philosopher Julian Huxley, who would then become the first General Director of UNESCO, and the British biochemist Joseph Needham.³ Decisive support for the inclusion of science within the scope of the planned organization was the recent dropping of the atomic bomb on Hiroshima and Nagasaki. This dramatic event would brutally show the tremendous ambivalence of science and technology, which can be used for the best and for the worse. The mushroom clouds over Japan had suddenly made the ethics of scientific research the burning question of the day. It is therefore not surprising that in her opening speech at the Conference, Miss Wilkinson declared:

“Though Science was not included in the original title of the Organization, the British delegation will put forward a proposal that it be included, so that the title would run “Educational, Scientific and Cultural Organization”. In these days, when we are all wondering, perhaps apprehensively, what the scientists will do to us next, it is important that they should be linked closely with the humanities and should feel that they have a responsibility to mankind for the result of their labours. I do not believe any scientists will have survived the world catastrophe, who

¹ Fernando Valderrama, *A History of UNESCO*, Paris, UNESCO, 1995, pp. 19-24.

² UNESCO Constitution (1945), Preamble.

³ Fernando Valderrama, *A History of UNESCO*, supra note 1.

will still say that they are utterly uninterested in the social implications of their discoveries”.

These words of Ellen Wilkinson summed up the anxieties felt by a majority of the delegates. On 6 November 1945, the “S” for Science was finally incorporated into the title of the new body, which should play a “humanization role in the education of scientists”.⁴ At the end of the conference, 37 countries founded the new UN agency. The Constitution of UNESCO, signed on 16 November 1945, came into force on 4 November 1946 after ratification by 20 countries: Australia, Brazil, Canada, China, Czechoslovakia, Denmark, Dominican Republic, Egypt, France, Greece, India, Lebanon, Mexico, New Zealand, Norway, Saudi Arabia, South Africa, Turkey, the United Kingdom and the United States. The first General Conference of the Organization was held in Paris from 19 November to 10 December 1946 with the participation of representatives from 30 member states entitled to vote and from 18 non-member states⁵.

Today, after 70 years of existence, UNESCO comprises 195 member states, that is, virtually all states in the world. In addition to its headquarters in Paris, the Organization has more than 50 field offices around the world. UNESCO implements its activities through the five program areas of Education, Natural Sciences, Social and Human Sciences, Culture, and Communication and Information. Sometimes referred to as “the intellectual agency” of the United Nations, UNESCO describes itself as a “laboratory of ideas and a standard-setter to forge universal agreements on emerging ethical issues”.⁶ Today, maybe more than ever, the Organization plays a crucial role in fostering intercultural dialogue and, at the same time, promoting respect for human rights.

UNESCO and human rights

From the very beginning of its foundation, UNESCO was inextricably linked to the human rights movement that emerged in the aftermath of the Second World War. In December 1948, the General Assembly of the recently created United Nations adopted the Universal Declaration of Human Rights. While this document was being drafted by the Human Rights Commission, UNESCO decided to anticipate the philosophical questions that the elaboration of such a declaration would inevitably raise: Could any values be said to be common to all countries? What would it mean to speak of certain rights as “universal”?

In order to address these challenging questions, UNESCO recruited some leading thinkers of the time for a “Committee on the Theoretical Bases of Human Rights”. This panel, chaired by the British historian and diplomat Edward H. Carr, prepared a questionnaire dealing with various theoretical problems in the formulation of an “international declaration of human rights”, and sent it out to scholars and statesmen around the world. Among the notable figures who responded to the 8-page questionnaire were Mahatma Gandhi, Jacques Maritain,

⁴ Aurora Plomer, *Patents, Human Rights and Access to Science*, Cheltenham, Edward Elgar Publishing, 2015, p. 141.

⁵ Fernando Valderrama, *A History of UNESCO*, supra note 1.

⁶ See: http://www.unesco.org/archives/new2010/en/history_of_unesco.html

Pierre Teilhard de Chardin, Benedetto Croce, and Aldous Huxley. The resulting 260-page volume captured an extremely broad spectrum of theoretical views and justifications for the human rights under consideration.⁷

The replies to the UNESCO enquiry were encouraging. They revealed that the principles underlying the draft Declaration were already present in many cultural and religious traditions, though not always articulated in terms of “rights”.⁸ For instance, Chinese Confucian philosopher Chung-Shu Lo pointed out in his reply that the absence of formal declarations of rights in China or the difficulties to translate the word “right” into Chinese did not signify “that the Chinese never claimed human rights”. He argued that, in fact, “the idea of human rights developed very early in China, and the right of the people to revolt against oppressive rulers was very early established”.⁹

Similarly, the Indian political scientist S. V. Puntambekar noted that “great thinkers like Manu and Buddha (...) have propounded a code, as it were, of ten essential human freedoms and controls or virtues necessary for good life”: five social freedoms (“freedom from violence, freedom from want, freedom from exploitation, freedom from violation and dishonour, and freedom from early death and disease”) and five individual virtues (“absence of intolerance, compassion or fellow-feeling, knowledge, freedom of thought and conscience and freedom from fear and frustration or despair”).¹⁰

Interestingly, despite the very different philosophical, religious and cultural backgrounds of the respondents to the UNESCO survey, the list of basic rights and values proposed by them were broadly similar. Certainly, the UNESCO philosophers were well aware of the lack of consensus on the ultimate foundations of those rights and values. However, they did not consider these discrepancies as an insurmountable obstacle for an international agreement. In his introduction to the volume that gathered the responses, Jacques Maritain insisted that the goal of the UN efforts was a *practical*, not a *theoretical* one, and pointed out that

“agreement between minds can be reached spontaneously, not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action”¹¹

Maritain also reported that in one of the UNESCO meetings someone expressed astonishment that representatives of very different and even opposed ideologies

⁷ UNESCO (ed.), *Human Rights. Comments and Interpretations*. A Symposium edited by UNESCO with an Introduction by Jacques Maritain, Paris, UNESCO, 1948. This document is online available at: <http://unesdoc.unesco.org/images/0015/001550/155042eb.pdf>

⁸ For a more detailed account, see Mary Ann Glendon, *A World Made New. Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York, Random House, 2002, p. 73-78.

⁹ “Human rights in the Chinese tradition” in: UNESCO (ed.), *Human Rights*, supra note 7, p.186.

¹⁰ “The Hindu concept of human rights” in: UNESCO (ed.), *Human Rights*, supra note 7, p. 195.

¹¹ Jacques Maritain, in: UNESCO (ed.), *Human Rights*, supra note 7, p. II.

could be able to agree on a list of human rights. The man was told: “Yes, we agree about the rights, but on the condition that no one asks us why”.¹²

In line with these remarks, the Committee of experts expressed the view that the issue at stake was not to achieve doctrinal consensus on the foundations of human rights, but to achieve agreement concerning the list of rights that had to be recognised and also concerning the action aiming at the implementation of those rights.¹³ From this point of view, and after having examined the responses to the survey, the group concluded in July 1947 that “agreement is possible concerning such a declaration”.¹⁴

The Committee suggested that the agreement should include the following fifteen rights: 1) the right to live, 2) the right of protection of health, 3) the right to work, 4) the right to social assistance in cases of need such as unemployment, infancy, old age, and sickness, 5) the right to property, 6) the right to education, 7) the right to information, 8) the right to freedom of thought and inquiry, 9) the right to self-expression in art and science, 10) the right to justice, which includes the right to fair procedures and freedom from torture and any cruel punishment and illegal arrest, 11) the right to political participation, 12) the right to freedom of speech, assembly, association, press, and religion, 13) the right to citizenship, 14) the right to rebel against an unfair regime, and 15) the right to share in progress.¹⁵

It is difficult to assess the precise impact that the report of the UNESCO committee had on the Human Rights Commission that drafted the Declaration of Human Rights, but the fact is that all the rights proposed by the UNESCO committee were included, in a way or another, in the final version of the instrument adopted in December 1948.¹⁶

Intersection between human rights and bioethics

Human rights are legal entitlements to have or do something that people have simply by virtue of their humanity. These entitlements concern those basic conditions that are necessary for leading a minimally good life, such as physical and mental integrity, freedom, privacy, health, equal treatment, etc. From this it is not hard to see that there is a close and multifaceted relationship between human rights and medical and health related issues. It is therefore not surprising that international instruments dealing with bioethics are framed using a rights-based approach. Moreover, they present themselves as an *extension of international human rights law to the field of biomedicine*.¹⁷ In other words, they

¹² Ibid., p. I.

¹³ UNESCO (ed.), *Human Rights*, supra note 7, Appendix II, p. 6.

¹⁴ Ibid., p. 15.

¹⁵ Ibid., pp. 11-15.

¹⁶ The right to rebellion is the only one that does not appear in the body of the UDHR, but it can be inferred from its Preamble, which states: “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by rule of law.”

¹⁷ Roberto Andorno, *Principles of international biolaw. Seeking common ground at the intersection of bioethics and human rights*, Brussels, Bruylant, 2013, p. 17.

are not merely ethical or political recommendations, but human rights instruments dealing with a particular kind of issues. This is to say that the new biolegal instruments do not intend to “regulate” or “subsume” bioethics,¹⁸ because bioethics or ethics cannot and should not be regulated by law. They simply stipulate minimal legal standards for promoting respect for human rights in the biomedical context. This is clearly the case of the Universal Declaration on Bioethics and Human Rights (henceforth UDBHR) adopted by UNESCO in 2005.¹⁹

The importance of the UDBHR lies precisely in the fact that it is the first global legal –thug non-binding– instrument that comprehensively addresses the linkage between human rights and bioethics. In this regard, the Chairperson of the drafting group of the Declaration pointed out that the most significant achievement of this document consists precisely in having integrated the bioethical analysis into a human rights framework.²⁰ As noted by the Explanatory Memorandum to the Preliminary Draft Declaration, “the drafting group also stressed the importance of taking international human rights legislation as the essential framework and starting point for the development of bioethical principles.”²¹ The Explanatory Memorandum also points out that there are two broad streams at the origin of the norms dealing with bioethics. The first one can be traced to antiquity, in particular to Hippocrates, and is derived from reflections on the practice of medicine. The second one, conceptualized in more recent times, has drawn upon the developing international human rights law. Furthermore, it states: “One of the important achievements of the declaration is that it seeks to unite these two streams. It clearly aims to establish the conformity of bioethics with international human rights law.”²²

Certainly, the UDBHR, like any intergovernmental declaration, makes part of the so-called soft law instruments, which are weaker than conventions because they are not immediately binding for states. The use of soft law instruments has rapidly developed over the last decades as a tool for dealing with sensitive matters such as human rights, the protection of the environment and bioethical issues. However, it would be misleading to deduce from the non-binding effect of soft law instruments that they are purely rhetorical statements and are therefore deprived of any legal effects. In reality, although they are not immediately binding for states, they are *potentially binding* in the sense that they are thought of as the beginning of a gradual process in which further steps are needed to make of such agreements binding rules for states. It is also worth mentioning that, in the course of time, soft law standards may become binding

¹⁸ Thomas Faunce, “Will international human rights subsume medical ethics? Intersections in the UNESCO Universal Bioethics Declaration”, *Journal of Medical Ethics*, 2005, vol. 31, p. 173-178.

¹⁹ Another example of this trend is the Council of Europe’s Convention on Biomedicine and Human Rights (1997).

²⁰ Michael Kirby, UNESCO and Universal Principles on Bioethics: What’s next? In: UNESCO. *Twelfth Session of the International Bioethics Committee (IBC). December 2005. Proceedings*, Paris: UNESCO, 2006, p. 126.

²¹ UNESCO, *Explanatory Memorandum on the Elaboration of the Preliminary Draft Declaration on Universal Norms on Bioethics*. Paris, UNESCO, 2005, para 11.

²² *Ibid.*, para 12.

rules in the form of customary law and jurisprudential criteria, as it happened with the Universal Declaration of Human Rights of 1948.²³ It is not to exclude that a similar process of hardening into binding rules could take place in the coming decades with the UDBHR.

What are the reasons for resorting to human rights for developing normative frameworks relating to bioethics? There is, first of all, a historical reason. Both international human rights law and modern medical ethics were born together as a response to the dramatic events of the Second World War. Several provisions of the Universal Declaration of Human Rights were informed by the horror caused by the revelation that prisoners of concentration camps were used as subjects of brutal medical experiments. This same shocking discovery led the Nuremberg trial to develop the famous ten principles for medical research, better known as the "Nuremberg Code". In this regard, it has been said that the Second World War was "the crucible in which both human rights and bioethics were forged, and they have been related by blood ever since."²⁴

In addition to this historical common ground, the close link between bioethics and human rights can also be explained by the circumstance that medical activities are directly related to some of the most important human rights (the right to life, the right to physical integrity, to confidentiality of personal data, the right to health care, etc.). Therefore, it is understandable that both fields overlap to some extent with each other, and that the already existing human rights framework is used to ensure the protection of such basic human goods, also in the field of biomedicine.

There is also a very practical reason for integrating bioethical standards into a human rights framework: there are few, if any, mechanisms available other than human rights to function as a global normative foundation in biomedicine. The human rights framework provides "a more useful approach for analysing and responding to modern public health challenges than any framework thus far available within the biomedical tradition."²⁵ Similarly, it has been argued that the recourse to human rights is fully justified on the ground that bioethics suffers from the plurality and range of actors involved and the overproduction of divergent norms, while "human rights offers a strong framework and a common language, which may constitute a starting point for the development of universal bioethical principles".²⁶ According to Richard Ashcroft, casting bioethical issues into human rights terms allows "a well-tested and long-established common language, rhetoric and institutional practice" to better identify the problems at

²³ Roberto Andorno, "Human dignity and human rights as a common ground for a global bioethics", *Journal of Medicine and Philosophy* 2009, vol. 34, n° 3, pp. 223-240.

²⁴ George J. Annas, *American Bioethics. Crossing Human Rights and Health Law Boundaries*. New York, Oxford University Press, 2005, p. 160.

²⁵ Jonathan Mann, "Health and human rights. Protecting human rights is essential for promoting health", *British Medical Journal*, 1996, vol. 312, pp. 924-925.

²⁶ Hélène Boussard, "The 'Normative Spectrum' of an Ethically-inspired Legal Instrument: The 2005 Universal Declaration on Bioethics and Human Rights", in Francesco Francioni (ed.), *Biotechnologies and International Human Rights*, Oxford, Hart Publishing, 2007, p. 114.

stake and ideally, to find the possible solutions to them.²⁷ This is to say that, while bioethics suffers from the plurality of actors and divergent theories, human rights offers a strong, effective and enforceable set of standards.

Another reason explaining the recourse to human rights in standard-setting action in bioethics is the *universal* nature of human rights, because such universality facilitates the development of global standards for biomedicine. Human rights are, by definition, conceived as transcending cultural diversity and national boundaries. They are held to be universal in the sense that “all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.”²⁸ In such a sensitive field as bioethics, where diverse socio-cultural, philosophical and religious traditions come into play, this universality is a very precious asset when formulating global standards for biomedical issues. This universality should however not be understood as a rigid one. Human rights are regarded by international law as flexible enough to be compatible, at least within certain limits, with respect for cultural diversity. As noted by Jack Donnelly, the human rights system allows local variations, not in the substance, but in the *form* in which particular rights are interpreted and implemented.²⁹

UNESCO's involvement in bioethics

UNESCO has acted as a pioneer in standard-setting action in global bioethics. Surprisingly, its involvement in this field has been harshly criticized by some scholars. For instance, during the drafting work of the Universal Declaration on Bioethics and Human Rights, it was argued that UNESCO would be in an “obvious attempt at meddling in the professional domain of another United Nations (UN) agency, WHO” and that “it is entirely unclear why UNESCO should concern itself with such a matter”.³⁰ In the same vein, it was claimed that “UNESCO is clearly overstepping its mandate and encroaching on that of the World Health Organization (WHO)”.³¹

More recently, Aurora Plomer has levelled similar objections to UNESCO's initiatives on bioethics:

“UNESCO's more recent standard-setting activities in bioethics (...) look somewhat detached from UNESCO's own programs to support the advancement and diffusion of science, overly focused on health/biomedical concerns which

²⁷ Richard Ashcroft, “Could Human Rights Supersede Bioethics?” *Human Rights Law Review*, 2010, vol. 10, n° 4, p. 644.

²⁸ James Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*, Berkeley, University of California Press, 1987, p. 561.

²⁹ Jack Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca, NY, Cornell University Press, 1989, pp. 109-142.

³⁰ Udo Schuklenk and Willem Landman, “From the Editors”. *Developing World Bioethics*, 2005, vol. 5, n° 3, pp. iii-vi.

³¹ John Williams, “UNESCO's Proposed Declaration on Bioethics and Human Rights. A Bland Compromise”. *Developing World Bioethics*, 2005, vol. 5, n° 3, pp. 210-215.

fall more squarely within WHO's mandate and overly preoccupied with limitations on modern biotechnologies on which there is no clear global consensus."³²

A variety of answers to these criticisms can be raised.³³ First of all, the division of competences between UN agencies is not as clear-cut as it might seem at first glance. This is especially the case in issues that are at the intersection of different disciplines, like those relating to bioethics. Therefore, when interdisciplinary matters are at stake, one must be extremely careful before accusing a UN agency of overstepping its mandate. Concerning the World Health Organization (WHO), it is obvious that, since it is the specialized UN agency for health, it is called to play a major role in the standard-setting activities in the field of public health. Nevertheless, as some scholars have pointed out, the WHO cannot manage this task alone, and this for several reasons: first, the field is growing rapidly encompassing more diverse and complex concerns, due to its interdisciplinary nature; second, the WHO has very limited experience in international health lawmaking; third, such a task would deplete the organization's limited resources and undermine its ability to fulfill its well-established and essential international health functions; fourth, member states are highly unlikely to limit their autonomy and freedom by granting to the WHO alone such an expansive new mandate; fifth, decentralization of the international lawmaking enterprise presents great advantages that cannot be ignored.³⁴

Furthermore, it is unclear why the only UN agency specialized in *sciences* (both natural and human sciences) and having served for decades as a forum for *philosophical* discussion on cross-cultural issues should abstain from making any contribution to the global normative guidance of biomedical sciences. It must be reminded that the purpose of UNESCO is, according to its Constitution, to promote "collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms".³⁵ Hence, it is understandable that an organization with such an ambitious mission may consider its duty to make its own contribution to the development of human rights standards in the field of biomedicine.

It should be also reminded that, after all, UNESCO and WHO are composed of the same member states. Therefore, any conflict of competences between these two bodies is to some extent meaningless. But there is a more substantial reason for favoring simultaneous involvement of both UN agencies in the field of bioethics: their standard-setting activities operate at *different levels*. While UNESCO tends to produce general normative frameworks of a predominantly philosophical and legal nature, WHO's guidelines are usually more technical and focused on very specific health-related issues. Thus, since the approach followed

³² Aurora Plomer, *Patents, Human Rights and Access to Science*, supra note 4, p. 161.

³³ See Roberto Andorno, "Global bioethics at UNESCO: in defence of the Universal Declaration on Bioethics and Human Rights", *Journal of Medical Ethics*, 2007, vol. 33, n° 3, pp. 150-154.

³⁴ Allyn L. Taylor, "Governing the Globalization of Public Health", *Journal of Law, Medicine and Ethics*, 2004, vol. 32, n° 3, pp. 500-508.

³⁵ UNESCO Constitution, 16 November 1945 (Article 1).

by both organizations is different, their respective involvement in this matter is not necessarily overlapping, but can perfectly coexist.³⁶

In addition, it is noteworthy that UNESCO has a long experience in standard-setting. At least since the 1970s, it has been involved in the development of around 28 international conventions, 13 declarations and about 33 recommendations relating to science, education and human rights, including the Convention against Discrimination in Education (1960), the Universal Copyright Convention (1971), the Declaration on Principles of International Cultural Cooperation (1966), the Declaration on Race and Racial Prejudice (1978), the Declaration on the Responsibilities of the Present Generations Towards Future Generations (1997), the Recommendation on the Status of Scientific Researchers (1974), the Recommendation concerning the International Standardization of Statistics on Science and Technology (1978), and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). Thus, even for merely pragmatic reasons, it is difficult to see why the international community could not take advantage of this long experience regarding sciences, its cross-cultural impact, and its significance for human rights in order to set up global bioethical standards.

Furthermore, UNESCO's involvement in bioethics did not just start in 2005, but dates back to the 1970s, when this organization started to organize symposia and conferences on bioethical issues, mainly related to genetics, life sciences and reproductive technologies.³⁷ In 1993, Federico Mayor, then Director-General of UNESCO, decided to set up an International Bioethics Committee (IBC) composed by experts from different countries and disciplines. The first task of the IBC was to prepare the preliminary draft of the Universal Declaration on the Human Genome and Human Rights, adopted in 1997. Thereafter, the IBC worked on the drafting of the International Declaration on Human Genetic Data, finalized in 2003, and of the Universal Declaration on Bioethics and Human Rights, adopted by UNESCO's General Conference in 2005. Since its creation, the IBC produced around 22 reports on a variety of bioethical topics such as genetic screening (1994), genetic counseling (1995), ethics and neurosciences (1995), the ethics of experimental treatments (1996), confidentiality and genetic data (2000), embryonic stem cells (2001), the ethics of intellectual property and genomics (2002), preimplantation genetic diagnosis and germ-line interventions (2003), informed consent (2008), human cloning (2009), social responsibility and health (2010), human vulnerability (2013), and benefit-sharing (2015). The truth is that no other intergovernmental organization could claim the same level of experience at the intersection of life sciences, ethics and human rights.³⁸

In addition to the decades-long involvement of UNESCO in bioethical issues, the truth is that a conflict of competences between two or more UN agencies about the governance of life sciences would be quite pointless. Such a conflict would be as absurd as a dispute between philosophers, physicians and lawyers

³⁶ Roberto Andorno, "Global bioethics at UNESCO...", supra note 33.

³⁷ Henk ten Have and Michèle Jean, "Introduction", in Henk ten Have and Michèle Jean (eds.), *The UNESCO Declaration on Bioethics and Human Rights. Background, principles and application*, Paris, UNESCO, 2009, p. 23.

³⁸ Allyn L. Taylor, "Governing the Globalization of Public Health", supra note 34.

over the “ownership” of bioethics. Obviously, none of these disciplines has the monopoly of bioethics. Since this field is by its very nature an interdisciplinary domain, all related professions (and likewise, all related UN bodies) have the right –and the duty– to make their specific contribution to this complex domain.³⁹

The Universal Declaration of Bioethics and Human Rights

On 19 October 2005, the Universal Declaration on Bioethics and Human Rights was adopted at the UNESCO’s General Conference by representatives of 191 countries. The overall goal of this instrument is “to provide a universal framework of principles and procedures to guide States in the formulation of their legislation, policies or other instruments in the field of bioethics” (Art. 2a).

The drafting of the UDBHR is the result of a combined effort by bioethics experts from different countries and disciplines who sat on the International Bioethics Committee (IBC) of UNESCO, and governmental representatives of UNESCO member states. The drafting work was preceded by a report of an IBC working group that assessed the feasibility of such an instrument. The group, chaired by Leonardo De Castro (Philippines) and Giovanni Berlinguer (Italy), concluded by supporting the initiative and affirming the need to develop “a worldwide common sense in order to foster understanding and cohesion in relation to new ethical categories and new practical possibilities emerging from science and technology”.⁴⁰ Encouraged by these conclusions, the IBC, chaired at the time by Mrs Michèle Jean (Canada), prepared the preliminary draft declaration, after almost two years of discussions and public consultations with governmental and non-governmental organizations. Justice Michael Kirby (Australia) chaired the drafting group, which was open to all IBC members. To ensure transparency in the process, the successive versions of the document were posted on the internet as they were being developed. In January 2005, the draft was examined by the Intergovernmental Bioethics Committee (IGBC) and, finally, it was revised in two successive meetings of governmental representatives, who introduced several amendments.⁴¹

Despite the great number of existing international guidelines, statements and declarations relating to bioethics, the UDBHR has made its own specific contribution to this field. First, because it is a *legal*, and not a merely ethical instrument like those produced by non-governmental organizations (for instance, the World Medical Association). Second, because it is not restricted to a particular area of bioethics, but provides a comprehensive framework of

³⁹ Roberto Andorno, “Global bioethics at UNESCO...”, supra note 33.

⁴⁰ UNESCO IBC, *Report on the Possibility of Elaborating a Universal Instrument on Bioethics*, 13 June 2003. Available at: <http://unesdoc.unesco.org/images/0013/001302/130223e.pdf>

⁴¹ See a detailed account of the drafting process in H. ten Have and M. Jean, “Introduction”, in H. ten Have and M. Jean (eds.), *The UNESCO Universal Declaration on Bioethics and Human Rights. Background, principles and application*, Paris, UNESCO, 2009, pp. 17-55.

principles for all biomedical activities. Third, because it is the first global intergovernmental instrument that addresses the linkage between human rights and bioethics.

In its Section II, the Declaration sets out 16 substantive principles relating to bioethics. These principles are to be understood as “complementary and interrelated” (Article 26). This means that the relationship between them is non-hierarchical.⁴² The complexity of bioethical dilemmas in real life makes it impossible to establish in abstract terms a clear priority of some principles over others. Therefore, in case of conflict between two or more principles, the priority of one of them will be determined taken into account the particular circumstances of each case, as well as the cultural specificities of each society. However, this does not preclude that the principle of respect for human dignity, due to its inescapable overarching nature, will always play a role in every bioethical decision.⁴³

The principles proclaimed in the Declaration are the following:

- Respect for human dignity and human rights (Article 3.1)
- Priority of the individual’s interests and welfare over the sole interest of science or society (Article 3.2)
- Beneficence and non-maleficence (Article 4)
- Autonomy (Article 5)
- Informed consent (Article 6)
- Protection of persons unable to consent (Article 7)
- Special attention to vulnerable persons (Article 8)
- Privacy and confidentiality (Article 9)
- Equality, justice and equity (Article 10)
- Non-discrimination and non-stigmatization (Article 11)
- Respect for cultural diversity and pluralism (Article 12)
- Solidarity and cooperation (Article 13)
- Access to health care and essential medicines (Article 14)
- Benefit sharing (Article 15)
- Protection of future generations (Article 16)
- Protection of the environment, the biosphere and biodiversity (Article 17)

Section III of the Declaration, entitled “Application of the principles”, is devoted to principles of a more procedural nature such as:

- The requirement for professionalism, honesty, integrity and transparency in the decision-making process regarding bioethical issues (Article 18)
- The need to establish independent, multidisciplinary and pluralist ethics committees (Article 19)

⁴² Eugenius Gefenas, “Article 26. Interrelation and complementarity of the principles”, in H. ten Have and M. Jean (eds.), *ibid.*, pp. 327-333.

⁴³ Roberto Andorno, “Human dignity and human rights as a common ground for a global bioethics”, *supra* note 23.

- The call for an appropriate risk assessment and management in the biomedical field (Article 20)
- The need for justice in transnational research (Article 21)

One could object that most of the above mentioned principles are not completely new, as they can be found in previous international human rights instruments. This is true, but this does not render the Declaration useless or redundant. On the contrary, it is the accumulation, convergence and complementarity of principles that gradually shape social consciousness in the international community, both internationally and transnationally.⁴⁴ Besides that, the greatest merit of the Declaration does not lie in having “invented” entirely new human rights principles, but in having developed them from previous international instruments to adapt them to the specific field of biomedicine, and in having assembled them together into a single, coherent legal instrument.

It could be also objected that the Declaration’s provisions are too vague and ambiguous. Indeed, the principles it proclaims are couched in very general terms and the document offers little guidance about their precise meaning and implications. This vagueness has led some scholars to argue that the Declaration will not provide much guidance because everyone can interpret the text as they like.⁴⁵ In reality, the importance of laying down general principles, even if they might appear to be too vague, should not be underestimated. They are meant to serve as starting point for further discussion and negotiation that could lead to more precise regulations, especially at a national level. It should not be forgotten that *national governments*, not international organizations, are the primary agents for the realization of human rights. The international community has an important role to play in setting up widely accepted standards, but once these principles have been set up, the primary locus for their implementation is within each state. In fact, legal principles, such as human rights, are necessarily very general and leave always open the possibility of various interpretations. In addition, the criticism of vagueness rests on a misunderstanding of the nature and scope of this kind of instruments. Intergovernmental declarations like the UDBHR should not be assessed with purely academic criteria, because they are not the product of purely academic work, but rather a kind of compromise between a theoretical conceptualization made by experts and what is practically achievable given the political choices of governments.⁴⁶

⁴⁴ Pierre-Marie Dupuy, “The impact of legal instruments adopted by UNESCO on general international law”, in: Abdulqawi Yusuf (ed.), *Normative action in education, science and culture. Essays in Commemoration of the Sixtieth Anniversary of UNESCO*, Paris, UNESCO, 2007, p. 356.

⁴⁵ David Benatar, “The trouble with universal declarations”, *Developing World Bioethics*, 2005, vol. 5, n° 3, pp. 220-224.

⁴⁶ Françoise Baylis, “Global Norms in Bioethics. Problems and Prospects”, in R. Green, A. Donovan, and S. Jauss (eds), *Global Bioethics. Issues of Conscience for the Twenty-First Century*, Oxford, Clarendon Press, 2008, pp. 323-339.

In this regard, it is also helpful to remind here the distinction between “rules” and “principles” made by legal philosophers.⁴⁷ “Rules” are norms that are applicable in an all-or-nothing fashion (for instance, “it is forbidden to drive faster than 50 km/h in the urban area”). If the facts stipulated in a rule are given, then either the rule is valid, in which case the answer it supplies must be accepted, or it is not, in which case it contributes nothing to the decision. But this is not the way principles operate. Principles alone never completely determine the content of a particular decision. They are “optimization commands” (*Optimierungsgebote*), which can be carried out to different degrees depending on the circumstances.⁴⁸ Human rights are one of the best examples of “principles”. Principles are always valid, but they have a dimension of *weight* or *importance*. When principles intersect, one who must resolve the conflict has to take into account the relative weight of each one. This is perfectly applicable to the norms contained in the UDBHR, which are, technically speaking, “principles”, not “rules”.

The very general nature of many of the norms included in the Declaration can also be explained for practical reasons. Indeed, it would have been impossible to reach a global agreement on the precise meaning and justification of fundamental moral notions such as “human dignity”, “autonomy”, “justice”, “benefit”, “harm”, or “solidarity”, which have a long philosophical history and are, to some extent, conditioned by cultural factors. The IBC members, who were involved in the drafting of the UDBHR, were well aware of the impossibility of finding out a common theoretical explanation or justification for the principles to be included into the document. Here, a parallel can be drawn with the conclusions of the committee of intellectuals consulted by UNESCO in 1947, which was mentioned above. In spite of the very different and even opposing philosophical and socio-cultural backgrounds of the IBC members, they succeeded to agree on a list of principles to be incorporated into the UDBHR. Paraphrasing the quotation by Maritain cited above, the IBC members could have perfectly said: “We agree about the principles, but on the condition that no one asks us why”.

Conclusions

UNESCO inherited the hopeful legacy of humanistic philosophy that emerged in the aftermath of the Second World War. Since its creation in 1945, the Organization has struggled to consolidate its overwhelming sense of purpose as well as to preserve the strength of the concept of humanity and its expression in international law.⁴⁹

Being the “intellectual agency” of the United Nations, UNESCO perceived well from the very beginning the need to anticipate the theoretical problems that may arise when drafting an international declaration of human rights. In the decades that followed, the Organization continued contributing to the development of

⁴⁷ See Ronald Dworkin, *Taking Rights Seriously*, London, Duckworth, 1977, pp. 22-28.

⁴⁸ Robert Alexy, *Theorie der Grundrechte*, Frankfurt, Suhrkamp, 1994, pp. 71-77.

⁴⁹ Pierre-Marie Dupuy, “The impact of legal instruments adopted by UNESCO on general international law”, *supra* note 44, p. 362.

human rights through its standard-setting action, in particular regarding those rights related to education, culture and science. It is very significant that, when addressing bioethical issues, which are closely related to the cultural specificity of each society, UNESCO did not abandon the conviction, well enshrined in international law, that human rights are universal and therefore transcend cultural and political boundaries. This means that people are entitled to basic rights simply by virtue of their humanity, and irrespective of ethnic origin, sex, nationality, religion, or social and economic status. The circumstance that bioethical issues are inevitably linked to the deepest socio-cultural and religious values of every society was not perceived by UNESCO as an obstacle to the formulation of universal principles in bioethics. With the adoption of the UDBHR in 2005, UNESCO has continued to consolidate its mission of promoting collaboration among nations through education, science and culture. Once again, universal human rights and their grounding in human dignity contribute to peace by playing a role as bridge between cultures.